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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (LAS VEGAS)**

USA

Plaintiff,

vs.

Todd C. Engel

Defendant

Case # 2:16-cr-00046-GMN-PAL-15

**MOTION FOR RELEASE PENDING
SENTENCING AND OR APPEAL**

Comes Now, Defendant Todd C. Engel, and moves this honorable court for an order granting release pending the imposition of sentencing, presently scheduled for March 22nd, 2018, or in the alternative release pending the outcome of an appeal to be filed challenging his conviction by jury verdict of April 24th 2017.

This motion is timely, is made in accordance with the Local Rules of this Court, the Federal Rules of Criminal Procedure, and 18 USC §3141 et seq, is not made for the purposes of delay, and is based on a good faith position that the relief requested may be granted and is likely to be granted by this court.

Respectfully submitted this 8th day of February 2018

/s/ Warren R. Markowitz, Esq
Warren R. Markowitz, Esq
Attorney for Defendant Todd C. Engel

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On March 3rd 2016 a warrant was executed for the arrest of Todd C. Engel (Engel) in the US District of Idaho for his participation in the April 2014 Bunkerville Protest, commonly referred to as the Bunkerville Standoff. Mr. Engel has always held that his participation in the events were rooted in his support and love for the U.S. Constitution, the Rights and Privileges enshrined therein, and for his concern for the safety of the protesters in light of the numerous historical events such as Waco & Ruby Ridge, in which protesters were met with substantial governmental force resulting in unwanted deaths and injuries, and not for the purpose of raising arms against the United States Government, the Government of the State of Nevada, or the people of Clark County Nevada.

Engel was one of nearly two dozen arrested across several states, involved with the events of April 2014 at the Bundy Ranch.

The entire group of defendants totaled nineteen (19), with each facing a total of sixteen (16) possible charges. In December 2016, (Docket #1098) with seventeen (17) defendants remaining for trial, the court subdivided the group into three (3) smaller groups, referred to as Tiers. The Tiers reflected the courts assumption/understanding as to the culpability of the members on a declining scale. Engel was a member of Tier 3, assumed to be the least culpable group of defendants.

After arrest Engel was transferred to the District of Nevada, and was remanded to the Nevada Southern Detention Center (NSDC). Engel has been a “resident” of the Nevada Southern Detention Center in Parhump, NV since coming to Nevada and has been incarcerated for a

1 period in excess of 700 days, including nearly 330 days prior to the commencement of his trial,
2 which began on Feb 6, 2017 and concluded on April 24, 2017. The trial concluded with a
3 conviction against Engel on two (2) counts.
4

5 Engel was convicted of 18 USC §1503 and 18 USC § 2- Obstruction of the Due
6 Administration of Justice and Aiding & Abetting, Charge#12, and 18 USC § 1952 and 18 USC §
7 2- Interstate Travel in Aid of Extortion and Aiding & Abetting, Charge #16.
8

9 Engel, has been the recipient of three(3) CJA Appointed Attorneys as counsel, before,
10 during, and after trial, and is currently represented by a family retained attorney, Warren Ross
11 Markowitz. The court granted the Pro Hac application of Atty Markowitz Pro Hac on January 23,
12 2018. In total Engel has been represented by, at one point or another, by four (4) attorneys, from
13 arrest to conviction.
14

15 In preparation for trial, and at trial, the court placed substantial limits on the defenses
16 ability to call, challenge, and present witnesses; limitations as to the reference of Constitutionally
17 protected rights, in particular Freedom of Speech, Right to Petition Government, Freedom of
18 Association, and Freedom of Assembly, the 1st Amendment of the US Constitution, and the
19 exercise of the 2nd Amendment of the US Constitution. All of which substantively denied the
20 defense, and Engel in particular, the ability to challenge the charges against him, and to put forth
21 a defense theory that supported, and justified his actions.
22

23 Engel was granted Pro Se status, and conducted himself with dignity and respect for the
24 court. During the examination of a government witness, the court revoked Engel's Pro Se status,
25 and forced upon him an inexperienced, unprepared, and ineffective standby counsel. The action
26 of the court is seen as a punishment for a line of unapproved questioning. This line of
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1 questioning, and the subject of the questioning were later core issues in the Trial of the Tier 1
2 Defendants, and the subject of numerous Brady issues.

3 The trial of the Tier 1 defendants, which contained Cliven Bundy, and the supporters
4 which were alleged by the government as the “ring leaders” of the purported conspiracy was
5 postponed until November 2017 due to the tragic, and unrelated, events in Las Vegas on 1
6 October 2017.

7
8 In December 2017, this court declared a mistrial, on the basis of repeated and continuous
9 actions of the United States Attorney’s Office (USAO) that impacted and undermined the trial
10 system, its rules, the faith of this court, and the rights enshrined in the U.S. Constitution. Shortly
11 before granting the mistrial, in November, this court dramatically reversed its position on pretrial
12 confinement of the Tier 1 and Tier 2 defendants. In what can only be assumed to be the release of
13 favorable information relating to the defense, which appears to have been willingly if not
14 deliberately withheld by the USAO, and which apparently contradicted the established
15 government position that the entirety of the defendants posed a risk of harm to the community at
16 large and should be held without bail or release, this court granted immediate, if not quick
17 release during trial for the Tier 1 defendants and the remaining Tier 2s. At the time of the courts
18 change in position, most of the defendants had spent more than 600 days in jail.

19
20 In January 2018, this court issued from the bench, to a courtroom full of onlookers, a
21 dismissal with prejudice in favor of the remaining Tier 1 Defendants. The basis of the dismissal
22 was the blatant manipulative conduct of the United States Attorney’s Office (USAO) in denying
23 to the defendants exculpatory, and necessary materials in violation of Brady, and Giglio, that the
24 USAO knew of, had access to, failed to collect, and in some instances ignored outright, resulting
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1 in clear violation of the defendants' rights, established case law, and established clear and
2 convincing evidence of prosecutorial misconduct.

3 The court concluded that the repeated and willing violations of the rights of the
4 defendants by the USAO represented a failure of the judicial system, and a systematic denial of
5 due process, which resulted in the present absence and future impossibility of a fair trial. The
6 tone and demeanor of this court, as it read its decision into the record, can only be compared to
7 realizing one was playing cards with a marked deck, or gambling in a crooked casino.
8

9 Engel brings this motion on the grounds that the dismissal applies to all defendants
10 including those like himself that were subject to trial prior to the January 2018 dismissal, and on
11 the grounds that the trifurcation, the separation of the total number of defendants into three parts,
12 was for the convenience of the court, and that a decision favorable to one related to exculpatory,
13 or favorable evidence withheld by the government should apply to all, particularly when the
14 evidence that was revealed to have been withheld dates back to the time of the first trial, kept
15 from the subsequent retrials that followed, and was not made known until nearly ten months later
16 resulting in the mistrial and the subsequent dismissal with prejudice of another group of related
17 defendants.
18

19 The information withheld by the USAO denied all of the defendants, including Engel and
20 those similarly situated, exculpatory material that would have allowed him and them,
21 individually and as a group, to mount an effective defense, vindicate their positions, justify their
22 actions, and establish with certainty that they were not the aggressors as they have asserted from
23 the very beginning.
24

25 The exculpatory information withheld by the government, the proverbial straw that broke
26 the camel's (court's) back, was available in or about Feb 2017, before, or during the trial of the
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1 Tier 3 defendants which included Engel. The absence of this material had a direct, and
2 substantive impact on trial strategy, witnesses, defense positions, cross examination, etc, and
3 assisted the government obtain the conviction of Engel on the charges of Obstruction of the Due
4 Administration of Justice, and Interstate Travel in Aid of Extortion. Engel remains in custody
5 pending sentencing.
6

7 8 **II. ARGUMENT**

9 The relief requested is within the authority of this Court, and this Court should grant the
10 release of Engel, as the request is supported by the following assertions;
11

- 12 1. This motion is not brought for the purpose of delay,
- 13 2. This motion raises substantial factual assertions, supported by the actions of this court, in
14 the dismissal with prejudice, and related declaration of mistrial against the Tier 1
15 defendants, and the subsequent dismissal with prejudice granted by this court on Feb 8th
16 2018, Docket # 3179, against the remaining Tier 2 defendants, that this conviction is
17 likely to result in the reversal of the jury decision, the granting of a new trial, a sentence
18 without a term of imprisonment, or a sentence so reduced that it exceeds the time already
19 served by Engel,
20
21 3. Engel is not likely to flee. Engel has maintained his innocence in this matter from the
22 very beginning and continues to do so,
23
24 4. Engel is supported by family and community, even in Las Vegas,
25
26 5. Engel has a desire to vindicate himself and establish with this court his innocence, and
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6. Engel is not a threat to the public at large; this position is supported by his behavior while under detention, during transport, and during trial, as he is not known as a threat and is respected by the personnel at the NSDC, and the US Marshall's Service.

Therefore, the granting of release prior to sentencing, or during the pendency of an appeal is appropriate and warranted in this instance and should be granted by this court.

A) MEETING THE STANDARD FOR PRESENTENCING RELEASE

The authority to release a defendant prior to sentencing or during a pending appeal is found in 18 USC § 3143(a)(1), which states;

... the judicial officer **shall order** that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence, other than a person for whom the applicable guideline promulgated pursuant to 28 U.S.C.994 does not recommend a term of imprisonment, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c). **If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c). (Emphasis added).**

Engel meets the requirements/standard as set forth in the statute. His position is further supported by the simple conclusory fact that the court created a conundrum in which the only proper solution is to grant the relief requested by Engel; his release.

On or about the 25th of November 2017, this court reversed, in a very dramatic and public way, its position relating to the of pretrial detention of the "Bundy Defendants". The court granted pretrial release for the remaining defendants of Tiers 1 & 2. These defendants, which at that time the court changed its position, had been in the custody of the government for roughly 600+ days. This action resulted in an immediate reversal of a long held conclusion by the court

1 that the defendants, individually, and as a whole, were a threat to the general public and
2 would/should remain in custody until the conclusion of the trials.

3 The courts position, was assumedly based on the threat assessments presented by the
4 USAO to the court and used by the prosecution to establish anti government bias on behalf of the
5 defendants, to create the perspective of a looming public threat created by the defendants, and to
6 justify the need for pretrial detention of the defendants. But the threat assessments presented to
7 the court, and the defense, were contradicted by others which assumedly were part of the
8 exculpatory materials under the control of the USAO, which were withheld from the defendants.
9 This information was only one piece of exculpatory evidence denied the defense which had a
10 substantive impact on the courts perspective and behavior towards the defendants, there would
11 be more missing materials discovered shortly thereafter resulting in an even greater impact on
12 the trial.
13

14 We can only be assume that had the materials been made available during the trial of the
15 Tier 3 defendants of which Engel was a part, the court would have granted the entirety of the
16 defendants pretrial release, as it did in November 2017. But this was not the case. Engel along
17 with the others remained in jail during trial, denied the ability to mount and advance a functional
18 and effective defense.
19

20 The dramatic actions of this court, the dismissal of the indictment of the Tier 1
21 Defendants, combined with the equally dramatic and conciliatory actions of the USAO's
22 requesting, and this court granting, a dismissal of the remaining defendants, those of Tier 2,
23 Docket # 3179, today the 8th of February 2018, lays the foundation for a successful appeal based
24 on the same Due Process, Brady, Giglio, and Constitutional violations that terminated the action
25 against the purported principals in the first place.
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1 Therefore, based on the plain language of the statute, the likelihood of success on appeal,
2 or the granting of a new trial, and the authority of this court to hear and determine the
3 applicability of the request for relief as it applies to Engel, it is clear from the circumstances and
4 available evidence that Engel is entitled to presentencing release, and requests that this court
5 grant it without undue haste.
6

7
8 **B) THE CHANGE IN CIRCUMSTANCES MAKES A NEW TRIAL LIKELY.**

9 Rule 33 of the Federal Rules of Criminal Procedure makes it likely that a new trial will
10 be granted.
11

12 Engel has suffered under several poorly performing, and ineffective appointed counsels.
13 From the collapse of his defense during the first trial, and the revocation of his Pro Se status
14 during that same trial, to the earth shattering dismissal with prejudice issued by this court on
15 January 8th 2018 of the indictment in relation to the Tier 1 defendants, and the subsequent
16 dismissal initiated by the USAO against the remaining defendants in Tier 2, Docket 3179, the
17 circumstances involving Engel are ripe for a new trial.
18

19 Engel's position is made clear through, FRCrP Rule 33(b)(1) ...

20 Newly Discovered Evidence. Any motion for a new trial grounded on newly
21 discovered evidence must be filed within 3 years after the verdict or finding of
22 guilty. If an appeal is pending, the court may not grant a motion for a new trial
23 until the appellate court remands the case.

24 This court, took it upon itself to correct an injustice on the American People, on January
25 8th, 2018. It did so by protecting the judicial system, the integrity of the court, and rights of the
26 accused. The actions of the court were based on the grounds that the court determined that the
27 USAO violated the due process rights of the defendants not once, not twice, but at least seven
28 times by denying the defendants exculpatory materials. From this one can only conclude that the

1 goal of the USAO was to win, not to deliver justice, not to respect the principals of law that
2 protect us all, not to protect the integrity of the judicial system, but to win at any costs.

3
4 These denials had a direct and substantive impact on Engel and the other defendants in
5 Tier 3 by denying them the ability & right to establish and advance effective defense theories,
6 support challenges to motions in limine brought by the USAO, call witnesses hostile to the
7 governments position, and the list goes on and on.

8
9 The revelation that this information was withheld, which became evident in January
10 2018, is substantive grounds for the granting of a new trial under Rule 33, and in conjunction
11 with the relief requested herein, the court should sua sponte grant a new trial.

12
13 Engel has substantive grounds for an appeal. They range from blatant due process
14 violations to ineffective assistance of appointed counsel

15
16 It is glaringly apparent that an appeal would not be for the purpose of delay, will likely be
17 successful, and therefore the grounds established in 18 USC §3143(b) (1) (B) provides this court
18 the guidance for granting release from detention. It states:

19 (B) that the appeal is not for the purpose of delay and raises a substantial question
20 of law or fact likely to result in—

21 (i) reversal,

22 (ii) an order for a new trial,

23 (iii) a sentence that does not include a term of imprisonment, or

24 (iv) a reduced sentence to a term of imprisonment less than the total of the time
already served plus the expected duration of the appeal process.

25 If the judicial officer makes such findings, such **judicial officer shall order the**
26 **release of the person in accordance with section 3142(b) or (c) of this title**, except that
27 in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial
28 officer shall order the detention terminated at the expiration of the likely reduced
sentence. **(emphasis added)**

1 Based solely on the recent events and actions by this court, we must conclude that at the
2 very least this court will grant a new trial under FRCrP Rule 33, and that a new trial is likely to
3 result in an acquittal on the charges Engel would face. In the alternative, an appeal which will be
4 filed should sentencing be carried out, will raise these same issues along with other applicable
5 challenges, that are likely to include, denial of due process, ineffective assistance of counsel,
6 denial of Constitutionally Protected Rights to Assemble, Speak, and Protest, and will likely result
7 in a reversal of his conviction.
8

9
10 This court should grant the relief requested and release Engel from detention pending the
11 outcome of post conviction motions and appellate challenges, and take whatever action it deems
12 necessary and proper in fulfilling its obligation to dispense justice.
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1 **III. CONCLUSION**

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3 The relief requested by Engel is within the statutory and rule based control, authority
4 and discretion of this Court. The court record, the court's own actions, and the law support
5 Engle's position, and therefore this Honorable Court should grant Engel's release, in anticipation
6 of sentencing, in expectation of a timely filed appeal, and in conjunction with or the alternative
7 of the granting of a new trial.
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9
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18 Pro Hac Vice Attorney of Defendant Todd C. Engel
19

20 **IT IS SO ORDERED.**

21 **DATED** this ____ day of February, 2018.

22 _____
23 Gloria M. Navarro,
24 Chief Judge United States District Court
25
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PROOF OF SERVICE

On the day 8th of February 2018, I did place with the Clerk of the Court, of the United States District Court for the District of Nevada, the **MOTION FOR RELEASE PENDING SENTENCING AND OR APPEAL** via the court's CM/ECF system, for distribution to all necessary parties.

Dated this 8th day of February 2018

/s/ Warren R. Markowitz, Esq
Pro Hac Vice Attorney of Defendant Todd C. Engel